

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Evaluate Existing Practices and Policies for Processing General Rate Cases and to Revise the General Rate Case Plan for Class A Water Companies.

R.03-09-005

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES
ON THE MAY 4, 2004 DRAFT DECISION**

Pursuant to the schedule set forth in the cover letter to the draft decision, the Office of Ratepayer Advocates ("ORA") here files its comments on the May 4, 2004 revised draft decision ("DD") of Administrative Law Judge ("ALJ") Maribeth Bushey. ORA agrees with the majority of changes incorporated by the ALJ in the May 4, 2004 draft decision. However, ORA recommends that the Commission modify the DD to permit the utilities to update their applications within 30 days of filing and ORA to incorporate updated numbers in its testimony, to remove growth from escalation calculations, to allow scheduling flexibility in some future rate cases, and to eliminate the requirements regarding the content of ORA's briefs. ORA also proposes modifications to the Appendix of the DD to make it consistent with the text of the decision.

I. THE COMMISSION SHOULD CONTINUE THE CURRENT PRACTICE OF ALLOWING UTILITIES TO UPDATE THEIR APPLICATIONS WITHIN 30 DAYS FROM THE APPLICATION FILING DATE AND SHOULD ALLOW ORA TO USE UPDATED DATA IN ITS TESTIMONY

The DD unnecessarily restricts all parties from using updated historical data stating that allowing a series of updates will result in an incomprehensible record. (DD, p. 11.) Although, it is understandable that repeated update could create some confusion as to the exact impact of the revenue requirement changes due to the update, a substantial amount of the reduction in the revenue requirements and the corresponding rate

reductions in the rate increase requests are attributable to updates to the recorded information such as the recorded year end plant balances, depreciation reserve, and other recorded expenses. Allowing updated information is even more important when reviewing January filers' applications because the utilities are using plant balances that are more than a year old as the starting point of the plant addition forecasts. This means that the starting point of the plant and expense estimates for the first test year are two years old. Test year estimates that rely on such old information will likely produce stale and inaccurate estimates. Forecasting two to three years in the future is a difficult job even without such limitations. The benefits of accurate forecasting of test year estimates far outweigh any negatives associated with allowing limited updates.

In parties' discussions in the workshops, there was a linkage between the application filing date and limiting the updates. When parties considered the possibility of not allowing updates, a March filing date was preferred by many so utilities could incorporate year-end data into their applications. A January filing date was seen as feasible if utilities' updates to the application are allowed for the purposes of incorporating year-end data. ORA supports the DD's change of test year, but urges the Commission to allow the utilities to update their applications within 30 days, as is done with current rate cases, and to allow ORA to use the latest information in ORA's testimony. This will limit updates and provide the Commission with more recent and accurate information.

The DD incorrectly bases its decision to limit ORA's use of updated information on the belief that if ORA is allowed to use updated data so too should the utilities in their rebuttal testimony and Commission's advisory staff when considering the proposed decision. (*Ibid.*) While ORA understands the point the DD is attempting to make, the argument is flawed. Allowing ORA to use updated information does not disadvantage any party but rather allows the Commission to consider more recent and reliable data in its evaluation of the application. The utilities have plenty of opportunity to address this updated information in their rebuttal testimony because it is their data -- it is not new to them and is no surprise. However, allowing the utilities to provide updated information

after ORA has issued its testimony does not allow ORA to review and analyze this information or address the information in any form of testimony. This would mean that updated information would be allowed into the record untested. The DD's statement that ORA's argument could extend to the Commission's advisory staff when considering the proposed decision is flawed because the Commission must only rely on the record in the proceeding and the Commission cannot consider updated data that is not in the record.

It is logical to continue to allow ORA to use updated information in its testimony as is done today. ORA recommends that the Commission continue the current practice of allowing the utilities to update their application within 30 days from the application filing date and allow ORA to use updated data in its testimony.¹ This would provide the utilities a chance to correct any errors they may find after the applications are filed and allow ORA to prepare its estimates in the best manner using the latest data available.

II. INCLUDING GROWTH IN ESCALATION CALCULATIONS OVER COMPENSATES THE UTILITIES

ORA continues to oppose the inclusion of customer growth in escalation calculations. As ORA stated in its earlier comments, it is inappropriate to include growth in customers in escalation calculations because work requirements and expenses do not increase in proportion to customer growth and productivity improvements should partially, if not fully, offset increases in workload. New customers with new facilities likely require little increase in operations and maintenance expenses and thus the expenses required to serve these new customers are not proportional to the increase in the number of customers.

The DD adopts a simple, five-year average percentage change in number of customers to estimate growth to minimize the contentiousness of this issue. However, a formulaic approach to this complicated issue is not appropriate. Unlike sales and

¹ ORA recommends that the Commission add a line item between lines 5 and 6 of the Schedule Summary in Section III of the Appendix to allow the utilities to update their applications 30 days after the applications are filed.

revenues, the utilities can control their expenses through productivity improvements and by reducing less essential expenses. The Commission has long encouraged and adopted ratemaking practices that would encourage more efficient utility operations and has discouraged automatic pass through of expense increases without the required in-depth analysis. Therefore, ORA opposes adopting a formula approach for rate increases attributable to growth for the escalation years.

While ORA expects that small increases in the workloads associated with growth will be offset by the corresponding increase in productivity, if the growth is substantial and productivity increases will not cover the increases in workloads, ORA recommends that the Commission permit the utilities to demonstrate why they can not meet the increase in growth without an additional growth related expense increase. ORA should then be permitted to evaluate the justification and determine the reasonableness of such request.

III. THE REVISED SCHEDULE CREATES PROBLEMS THAT SHOULD BE RECOGNIZED AND ACCOMMODATED

The DD adopts calendar test years recognizing that this will be simpler for utilities to prepare and ORA to review than non-calendar year test years. However, retaining calendar year test years required the ALJ to adjust the dates that the proposed applications (“PA”) and applications are due. The PAs and applications are now due two months earlier than under the previous non-calendar test year schedule – PAs for the July 2004 filers are due on May 1, 2004, a date already passed. ORA recognizes that July 2004 filers will not be prepared to file their applications by July 1, 2004. ORA recommends that the Commission allow the July 2004 filers to file their PA on July 5, 2004 and their applications on September 1, 2004 as previously anticipated. Allowing this delay, however, will impact ORA staffing. Staff working on the July 2004 filings will not be done with those applications at the time the November 2004 PAs are presented. This could result in problems with reviewing the November 2004 PAs for deficiencies. ORA requests that the Commission recognize this possible staffing problem and modify the DD to allow the schedules for all July 2004 and January 2005

filers to be modified and extended, if necessary, to accommodate this overlap in staff work assignments. ORA will attempt to process these applications as efficiently as possible so that staff can be back on schedule for the July 2005 rate cases.

IV. THE RATE CASE PLAN SHOULD NOT SPECIFY WHAT ORA MUST INCLUDE IN ITS BRIEFS

The DD continues to require ORA to include in its brief a “comprehensive discussion of the issues” and to “address in detail each issue identified by the applicant as ‘contentious’ in the application.” (DD Appendix at p. 14) ORA continues to oppose these requirements. As ORA stated in its earlier comments, ORA will makes every effort to present a thorough and detailed brief on all of its issues in the case, however, the content and level of discussion contained in ORA’s brief is a matter that ORA, not the Commission, must be allowed decide.

The Commission must permit ORA to prioritize its workload and determine the resources it is going to devote to a proceeding during all phases of the case. Due to resource limitations or other considerations, ORA may choose not to address all of the issues identified as “contentious.” Moreover, some of those contentious issues may involve issues of interest to other parties and not ORA. The Commission acknowledged in its 2003 Work Plan to the Governor and Legislature that the agency “does not have the resources to address every issue” and it must “set its priorities by evaluating the relative costs and benefits of acting or not acting.” (Commission 2003 Work Plan, p. 2.) ORA similarly does not have the resources to address every issue in every case. ORA must be permitted to determine which of the issues are worth pursuing given the resources available. The DD’s requirement defining what ORA must include in its brief usurps ORA management’s ability to prioritize issues and assign staff accordingly.

V. ORA RECOMMENDS CHANGES TO THE APPENDIX TO MAKE IT CONSISTENT WITH THE TEXT OF THE DRAFT DECISION

ORA noticed that some of the changes proposed in the text of the DD are not fully incorporated into the Appendix. ORA recommends that the Commission make the following changes to the Appendix to make it consistent with the text of the DD:

- Section II: The dates in the last sentence of the first paragraph in this section need to be changed to be consistent with the new filing days shown in the subsequent table. The sentence should be changed as follows: “The deadline for the utility to file its proposed application is either ~~January 5th~~ - ~~or July 5th~~ November 5th or May 1st with the requisite application being filed on the following ~~March 1 or September 1~~ January 5 or July 1, respectively, as provided below:”
- Section II, first table: The table should note that July filers will file calendar year data, not fiscal year data.
- Section II, first table: ORA recommends that the Commission add a footnote to the line titled “Escalation Year 1” clarifying that this will also be test year 2 for rate base items as adopted in the text of the decision.
- Section II, second table, first line in the table: November 2005 should read November 2004.
- In Section III, event 4 indicates that the Executive Director must act on an appeal 10 days after the appeal is filed. In Section IV.4, it states the Executive Director must act on the appeal no later than 5 days after the appeal is filed. These sections need to be consistent. ORA notes that Section IV.3, “Appeal to the Executive Director” does not contain a time frame while the Schedule in Section II seems to indicate that an appeal is required within 5 days of the deficiency letter.
- Section IV.1.A: The dates need to be changed to be consistent with the new filing dates. The sentence should be changed as follows: No later than ~~January 5~~ November 5 for water utilities scheduled to file the final application on ~~March 1~~ January 5 and no later than ~~July 5~~ May 1 for water utilities scheduled to file on ~~September 1~~ July 1.

- Section IV.1.C, Results of Operation: The third paragraph does not incorporate changes made to the text of the decision.³
- Section IV.1.C, Regulated Plant in Service: This section should indicate that the Commission will continue to require two test years and one attrition year for rate base items.

VI. CONCLUSION

ORA recommends that the Commission adopt the draft decision as modified above. ORA further recommends that the Commission review the entire rate case plan in two years as it is possible and even likely that issues concerning the adopted plan will arise during the next two years.

Respectfully submitted,

/s/ MONICA MCCRARY

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May 17, 2004

³ What this paragraph should say will depend on what is adopted in the final decision but it currently does not incorporate changes made in the text of the draft decision (i.e. removing nonrecurring and significant expenses).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document
**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE MAY
4, 2004 DRAFT DECISION** in **R.03-09-005**.

A copy was served as follows:

☒ **BY E-MAIL:** I sent a true copy via e-mail to all known parties of record
who have provided e-mail addresses.

☐ **BY MAIL:** I sent a true copy via first-class mail to all known parties of
record.

Executed in San Francisco, California, on the **17th** day of **May, 2004**.

/s/ ALBERT HILL
Albert Hill